

EXTENDED LAND-TENURE RIGHTS IN NUSANTARA: A LEGAL ANALYSIS OF REGULATORY INCONSISTENCY AND AGRARIAN JUSTICE

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Abstract

*Indonesia's relocation of its national capital to Nusantara, East Kalimantan, has created a special land-tenure regime designed to accelerate development and attract investment. Under the general agrarian framework established by Law No. 5 of 1960 and Government Regulation No. 18 of 2021, the maximum cumulative duration of the Right to Cultivate is 95 years, while the Right to Build may be granted for up to 80 years. By contrast, the special regulations governing Nusantara allow these rights to extend to 190 years and 160 years, respectively. This study analyses the normative inconsistencies between the national agrarian regime and Nusantara's special legal framework, as well as their implications for legal certainty, land-rights protection, agrarian justice, and sustainable land governance. It employs a doctrinal legal method using statutory, conceptual, and philosophical approaches. Primary and secondary legal materials are examined qualitatively through grammatical, systematic, and teleological interpretation, supported by deductive reasoning and Hans Kelsen's hierarchy of norms theory. The findings show that the extended tenure schemes may be defended under the principle of *lex specialis derogat legi generali*. Nevertheless, their substantial departure from the Basic Agrarian Law creates tension concerning regulatory hierarchy, the social function of land, and the State's constitutional duty to manage natural resources for the greatest prosperity of the people. The policy may also concentrate land control in business entities, restrict access for local and Indigenous communities, intensify agrarian disputes, encourage speculation, and accelerate environmental degradation. Although long-term tenure may strengthen investor confidence, it should not weaken public oversight, customary rights, or agrarian justice. The study concludes that harmonisation between Nusantara's special regulations and national agrarian principles is essential. Periodic evaluation, transparent allocation, meaningful community participation, environmental safeguards, recognition of customary tenure, and enforceable obligations for rights holders are required to ensure legally coherent, socially equitable, and environmentally sustainable development.*

Keywords: *Nusantara Capital City; Right to Cultivate; Right to Build; Legal Inconsistency; Agrarian Law; Legal Certainty.*

A. Introduction

In August 2019, the central government formally announced East Kalimantan as the site for Indonesia's new national capital.¹ Three years later, the executive and the House of

¹ Nusa Idaman Said et al., 'Forecasting and Sustainability of Raw Water Supply for Indonesia's New Capital', *International Journal of Sustainable Development and Planning* 19, no. 1 (2024): 197–207, <https://doi.org/10.18280/ijstdp.190118>; Robert Templer, *Nusantara: Indonesia Builds a New Capital* (Bui Jones,

Representatives legitimised this decision through the enactment of Law No. 3 of 2022 concerning the State Capital City/*Ibu Kota Negara*.² Straddling the two regencies of Penajam Paser Utara and Kutai Kartanegara, East Kalimantan was selected because it satisfied the majority of the seven predetermined criteria. These benchmarks included the availability of vast tracts of state- and SOE-owned land; a central geographical location within the Indonesian archipelago; a low risk of social conflict owing to a local culture receptive to newcomers; adequate soil bearing capacity and raw water supply; adherence to defence and security parameters; minimal vulnerability to natural disasters; as well as proximity to established, developing urban centres.³

The development of the Nusantara Capital City is inextricably correlated to the function of land, which serves as a critical resource supporting both infrastructure and broader developmental activities.⁴ Indeed, the Basic Agrarian Law No. 5 of 1960 explicitly affirms that land—defined as the Earth's surface—is a finite natural resource that must be managed prudently.⁵ Consequently, land rights are paramount to establishing legal certainty for stakeholders involved in this mega-

2025); Aichiro Suryo Prabowo and Thomas B. Pepinsky, 'Indonesia's New Capital City: Public Funding and Public Support', *Bulletin of Indonesian Economic Studies*, 1 April 2026, 1–71, <https://doi.org/10.1080/00074918.2026.2646837>; Hoong C. Teo et al., 'Environmental Impacts of Planned Capitals and Lessons for Indonesia's New Capital', *Land* 9, no. 11 (2020): 438, <https://doi.org/10.3390/land9110438>; Rusman Nurjaman and Tatang Rusata, 'Exclusion and Resistance: The Potential of Agrarian Conflicts Overshadowing the New Capital City', in *Assembling Nusantara: Mimicry, Friction, and Resonance in the New Capital Development*, ed. Henny Warsilah et al. (Springer Nature Singapore, 2023), https://doi.org/10.1007/978-981-99-3533-8_10; Arif Hidayat et al., 'Study of Regulatory and Institutional Framework for the Relocation of the National Capital in Indonesia', *Journal of Law and Legal Reform* 5, no. 4 (2024): 1821–80, <https://doi.org/10.15294/jllr.v5i4.13566>.

² Delik Hudalah, 'Building a Capital City, Carving Out a Megaproject Legacy?', *Habitat International* 141 (November 2023): 102933, <https://doi.org/10.1016/j.habitatint.2023.102933>; Alfath Satria Negara Syaban and Seth Appiah-Opoku, 'Building Indonesia's New Capital City: An in-Depth Analysis of Prospects and Challenges from Current Capital City of Jakarta to Kalimantan', *Urban, Planning and Transport Research* 11, no. 1 (2023): 2276415, <https://doi.org/10.1080/21650020.2023.2276415>; Henny Warsilah, 'Reconstruction of Ethnic Identity in the Development of a New Capital City in East Kalimantan: Participation and Access to City Resources', in *Assembling Nusantara: Mimicry, Friction, and Resonance in the New Capital Development*, ed. Henny Warsilah et al. (Springer Nature Singapore, 2023), https://doi.org/10.1007/978-981-99-3533-8_7.

³ Rikardo Simarmata, 'Tumpang Tindih Penguasaan Tanah di Wilayah Ibu Kota Negara "Nusantara"', *Veritas et Justitia* 9, no. 1 (2023): 1–33, <https://doi.org/10.25123/vej.v9i1.6504>.

⁴ Achmad Ghazali and Walter Timo de Vries, 'Decoding Urbanization Pathways: An Integrative Land Use Change Indicator Framework for Sustainable Development in Nusantara', *iScience* 29, no. 8 (2026): 116763, <https://doi.org/10.1016/j.isci.2026.116763>; Bambang Susantono et al., 'Smart City Framework for Nusantara Capital City Development', in *The Emerald Handbook of Smart Cities in the Gulf Region: Innovation, Development, Transformation, and Prosperity for Vision 2040*, ed. Miltiadis D. Lytras et al. (Emerald Publishing Limited, 2024), <https://doi.org/10.1108/978-1-83608-292-720241032>.

⁵ Alen Saputra et al., 'The Regulation of Land Ownership Rights for Legal Entities in the Perspective of Modern Agrarian Law: Challenges of Fair Legal Evolution', *Yuridika* 41, no. 1 (2026): 1–20, <https://doi.org/10.20473/ydk.v41i1.75227>; Soelistyowati, 'Reassessing State Responsibility for Indigenous Rights to Natural Resources Based on Justice Principle', *Jambe Law Journal* 7, no. 1 (2024): 149–67, <https://doi.org/10.22437/home.v7i1.347>; Mira Novana Ardani et al., 'Sustainable Environmental Management in Nusantara Capital City: Legal Perspectives and Best Practices', *Diponegoro Law Review* 9, no. 2 (2024): 167–85, <https://doi.org/10.14710/dilrev.9.2.2024.167-185>.

project. Such legal certainty does not merely safeguard the rights of individuals and corporate entities regarding land tenure and utilisation; it also serves as a primary mechanism to prevent agrarian disputes and conflicts. By ensuring clear status and legality of land titles, all parties can operate securely, orderly, and accountably, thereby fostering a conducive investment climate whilst ensuring that development proceeds equitably and sustainably.

Land ownership is certified by a title deed, which constitutes valid proof of legal ownership over a specific parcel of land. Land rights themselves empower the titleholder—whether individuals, collectives, or corporate bodies—to utilise land in the broadest sense, namely to possess, use, or derive benefits from it.⁶ Although various forms of land rights exist within the statutory framework, those associated with the investment incentives provided by the Government are limited to the Rights to Cultivate, the Rights to Build, and the Rights to Use.⁷ This study focuses specifically on the Rights to Cultivate and the Rights to Build, as these represent the most salient legal mechanisms for land tenure within the context of Nusantara's development.

The Rights to Cultivate is a specific category of land tenure that grants the right to utilise state-controlled land for agricultural, aquacultural, or livestock enterprises.⁸ Eligibility for a Rights to Cultivate is strictly confined to Indonesian citizens and corporate entities established under Indonesian law and domiciled within the country; it cannot be granted to foreign nationals or foreign legal entities.⁹ Under standard national frameworks, a Rights to Cultivate is granted for an initial maximum period of 35 years, extendable for up to 25 years, and renewable for a further maximum of 35 years. Consequently, the maximum cumulative duration for a Rights to Cultivate, including all extensions and renewals, is 95 years.¹⁰ This temporal framework is governed by Law No. 5 of 1960 concerning the Basic Agrarian Law, *juncto* Government Regulation No. 18 of 2021

⁶ Muh. Afif Mahfud et al., 'Legal Perspectives on Foreign Land Ownership: Balancing Investment, Equity, and Sovereignty', *Corporate Law & Governance Review* 7, no. 3 Special Issue (2025): 252–62, <https://doi.org/10.22495/clgrv7i3sip10>; Muh. Afif Mahfud, 'Fungsi Hukum Dan Legal Pluralism Di Bidang Agraria', *Mimbar Hukum* 35, no. 2 (2023): 220–44, <https://doi.org/10.22146/mh.v35i2.4160>.

⁷ Darwin Ginting, 'Politik Hukum Agraria Terhadap Hak Ulayat Masyarakat Hukum Adat Di Indonesia', *Jurnal Hukum & Pembangunan* 42, no. 1 (2012): 1–29, <https://doi.org/10.21143/jhp.vol42.no1.284>.

⁸ Urip Santoso, *Hukum Agraria Kajian Komprehensif* (Kencana Preneda Media Group, 2012)..

⁹ Yusuf Saepul Zamil, 'Pengendalian Pemberian Hak Guna Usaha atas Tanah sebagai Upaya Pencegahan Kerusakan Hutan karena Perambahan Kawasan Hutan yang Dilakukan oleh Perkebunan', *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 2, no. 2 (2015): 332–50, <https://doi.org/10.22304/pjih.v2n2.a7>.

¹⁰ Rebecca Anne Riggs et al., 'Forest Tenure and Conflict in Indonesia: Contested Rights in Rempek Village, Lombok', *Land Use Policy* 57 (November 2016): 241–49, <https://doi.org/10.1016/j.landusepol.2016.06.002>; Muh. Afif Mahfud et al., 'Constitutionality of Simultaneous Extension and Renewal of Land Rights', *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 1 (2024): 159–76, <https://doi.org/10.29303/ius.v12i1.1360>.

concerning Management Rights, Land Rights, Condominium Units, and Land Registration, reflecting the state's statutory framework to facilitate agricultural investment.¹¹

Conversely, the regulatory framework governing the Rights to Cultivate within the specific jurisdiction of the new Nusantara Capital City in East Kalimantan relies on a distinct legal basis. Law No. 3 of 2022 concerning the State Capital serves as the foundational legislation for this national strategic project. This has been supplemented by subordinate legislation, namely Government Regulation No. 12 of 2023 concerning the Issuance of Business Licensing, Ease of Doing Business, and Investment Facilities for Business Actors in the State Capital. Under Government Regulation No. 12 of 2023, a Rights to Cultivate in the new capital may be granted for an unprecedented initial term of 95 years. Furthermore, business entities may apply for a second allocation, extending an additional maximum period of 95 years, resulting in a cumulative potential duration of 190 years. This arrangement is explicitly codified in Article 9 of Presidential Regulation No. 75 of 2024 on the Acceleration of New Capital City Development, which guarantees tenure security and provides fiscal incentives for investors.

Similarly, the Rights to Build represents a form of land tenure that entitles an individual or legal entity to construct and maintain buildings on land owned by another party for a specified duration. For State Land and land subject to a Right of Management, the applicable regulations provide that a Right to Build may be granted for an initial period of up to 30 years, extended for a maximum of 20 years, and subsequently renewed for a further period of up to 30 years. Accordingly, Government Regulation No. 18 of 2021 permits a maximum cumulative tenure of 80 years. This represents a significant extension of the original framework established under Law No. 5 of 1960 concerning the Basic Agrarian Law, which limited the maximum cumulative duration of a Right to Build to 50 years.¹² Crucially, within the jurisdiction of the new capital city, Article 10 paragraph (2) (b) of Presidential Regulation No. 75 of 2024 further expands this limit, allowing the Rights to Build to reach a total cumulative duration of 160 years.¹³

Based on the dynamic outlined above, a clear inconsistency emerges between the general statutory framework governing the duration of national land titles—as stipulated in Law No. 5 of

¹¹ Muh. Afif Mahfud, 'Hak Atas Tanah bagi Masyarakat Tradisional di Pantai: Perspektif Hak Asasi Manusia', *Mimbar Hukum* (Yogyakarta) 31, no. 3 (2019): 352–67, <https://doi.org/10.22146/jmh.42265>.

¹² Lego Karjoko et al., 'Legal Inconsistency on the Right to Build: Investment, Agrarian Rights, and Constitution', *Journal of Sustainable Development and Regulatory Issues* 3, no. 2 (2025): 324–46, <https://doi.org/10.53955/jsderi.v3i2.106>.

¹³ Yeremia Orlando Lapasian et al., 'Kajian Yuridis tentang Tugas Pemerintah Memfasilitasi Hak atas Tanah dalam Rangka Penanaman Modal', *Lex Administratum* (Manado) 12, no. 1 (2023), <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/52723>.

1960 concerning the Basic Agrarian Law, *juncto* Government Regulation No. 18 of 2021—and the special legal regime established specifically for the New Capital City. This special regime is codified under Law No. 3 of 2022 concerning the State Capital, *juncto* Government Regulation No. 12 of 2023, and further supplemented by Presidential Regulation No. 75 of 2024. In the context of Nusantara’s development, this specialised regulatory framework represents a significant departure from general agrarian principles. By offering substantially extended and highly flexible temporal schemes for both the Rights to Cultivate and the Rights to Build, the government normatively aims to enhance investment appeal and provide robust legal certainty for investors. Concurrently, however, this policy risks undermining the foundational tenets of land tenure long established by the Basic Agrarian Law.¹⁴

This regulatory divergence complicates the harmonisation of statutory laws and invites critical debate regarding the hierarchy of norms and the principles of national agrarian law. On the one hand, the invocation of *lex specialis* regarding State Capital City regulations may be justified by overriding national strategic objectives.¹⁵ On the other hand, if these special provisions substantially depart from the fundamental doctrines of the Basic Agrarian Law, they risk engendering legal uncertainty and destabilising the consistency of the national land law system. Consequently, systematic harmonisation and a strict delineation of boundaries are imperative to ensure that the special regulations for State Capital City remain aligned with the core values of Indonesian agrarian law.¹⁶

While the granting of exceptional privileges—extending the Rights to Cultivate up to 190 years and the Rights to Build up to 160 years—aims to accelerate development, it introduces severe socio-economic risks.¹⁷ Chief among these is the potential expansion of land tenure inequality, where massive corporate concessions may systematically curtail the access of local and indigenous communities to land. Absent adequate protection, such development threatens to disproportionately benefit capital investors while marginalising local populations from direct economic gains.

¹⁴ Muhammad Syaifuddin, ‘Perspektif Global Penyelesaian Sengketa Investasi di Indonesia’, *De Jure: Jurnal Hukum dan Syar’iah* 3, no. 1 (2011): 58–70, <https://doi.org/10.18860/j-fsh.v3i1.1320>.

¹⁵ Nurfaqih Irfani, ‘Asas Lex Superior, Lex Specialis, dan Lex Posterior: Pemaknaan, Problematika, dan Penggunaannya dalam Penalaran dan Argumentasi Hukum’, *Jurnal Legislasi Indonesia* (Jakarta) 17, no. 3 (2020): 305–25, <https://doi.org/10.54629/jli.v17i3.711>.

¹⁶ FX. Sumarja, ‘Hukum Agraria Nasional sebagai Produk Politik Berbasis Nilai-Nilai Pancasila’, *Masalah-Masalah Hukum* (Semarang) 41, no. 4 (2012): 521–28, <https://doi.org/10.14710/mmh.41.4.2012.521-528>.

¹⁷ Edi Rohaedi et al., ‘Mekanisme Pengadaan Tanah Untuk Kepentingan Umum’, *Palar | Pakuan Law Review* 5, no. 2 (2019): 198–220, <https://doi.org/10.33751/v5i2.1192>.

Furthermore, these unprecedented temporal extensions pose a significant threat to environmental sustainability, particularly if commercial exploitation eclipses ecological preservation, thereby exacerbating environmental degradation in East Kalimantan. This asymmetric application of land rights risks creating wider disparities and provoking social tensions among business actors operating outside the State Capital City jurisdiction who do not enjoy similar concessions. To mitigate these adverse outcomes, the government must formulate comprehensive redistribution policies that guarantee direct benefits for local populations. This must be accompanied by the implementation of an inclusive land governance framework that actively engages communities in decision-making processes, starting from planning through to execution. Prioritising the protection of local rights—both through the formal legal recognition of customary land tenure and the institutionalisation of participatory mechanisms—is essential to ensuring a just and sustainable development trajectory.

The foregoing discussion underlines a sharp divergence in the temporal frameworks governing the Rights to Cultivate and the Rights to Build. This creates an evident tension between the national land law regime—rooted in Law No. 5 of 1960 concerning the Basic Agrarian Law—and the special statutory carve-out established for the New Capital City under Law No. 3 of 2022, *juncto* Government Regulation No. 12 of 2023 regarding the granting of business licences, business facilitation, and investment incentives for business operators in the State Capital City. These discrepancies indicate inconsistencies in the legal framework that require further examination, both in terms of the hierarchy of legislation and the principles of national agrarian law.

To evaluate this statutory friction, this study is structured around two primary research questions. First, it examines the nature of the normative inconsistencies between the Basic Agrarian Law and the State Capital City special regulations regarding title durations, specifically through *the prism of the lex specialis derogat legi generali* doctrine and its alignment with foundational national agrarian principles. Second, it assesses the juridical consequences of these contradictions on legal certainty, land rights protection, and the broader trajectory of land management policy within the context of Nusantara's development.

B. Research Method

This study adopts a doctrinal legal research methodology utilising three distinct approaches: *a statutory approach*, to scrutinise relevant laws and regulations for normative consistency and hierarchical alignment; *a conceptual approach*, to interrogate legal doctrines such as, *lex specialis*

and the bedrock principles of agrarian law; and *a philosophical approach*, to evaluate the underlying values of land regulation, specifically justice, utility, and legal certainty. This study relies on authoritative primary legal materials, chiefly statutory legislation, alongside secondary sources consisting of scholarly legal publications and non-official documents that contextualise the statutory provisions. Primary legal materials comprise authoritative and legally binding sources, primarily consisting of statutory legislation. Secondary legal materials serve to explain and support these primary sources, encompassing all legal publications that fall outside official state documentation. The analytical framework relies on a qualitative juridical method, using deductive legal reasoning to derive concrete applications from abstract, general norms. This analytical process employs several techniques of statutory interpretation: grammatical interpretation to grasp the textual meaning of a norm, systematic interpretation to map the inter-regulatory relationships within the broader legal system, and teleological interpretation to discern the underlying legislative intent behind the provisions. Furthermore, Kelsen's *Stufenbaulehre* (the hierarchy of norms theory) is also applied to evaluate structural compatibility and consistency across the different tiers of the legislative hierarchy.¹⁸

C. Results and Discussion

1. Statutory Inconsistencies in Rights to Cultivate and Rights to Build Durations: A *Lex Specialis* Perspective

The relocation of the national capital to East Kalimantan represents a pivotal strategic agenda requiring a robust statutory foundation to ensure seamless execution and forestall future liabilities.¹⁹ Considering that the absence of law-level legislation would precipitate profound legal uncertainty, institutional gridlock, and administrative friction, the government and the House of Representatives enacted Law No. 3 of 2022 concerning the Law of New Capital City on 18 January 2022. This Act provides the necessary constitutional legitimacy for the relocation while establishing the State Capital City Authority to oversee development and governance.

Without such a high-level statutory mandate, the capital's relocation would inevitably trigger systemic vulnerabilities, including ambiguous land management protocols, dampened investor confidence, institutional conflicts of interest, and protracted litigation. Consequently, a

¹⁸ Hans Kelsen, *Pure Theory of Law* (Lawbook Exchange, 2005).

¹⁹ Poltak Partogi Nainggolan et al., *Relocating Indonesia's Capital City: The Struggle for Power and Resources in Borneo* (Springer, 2025).

comprehensive legal instrument is imperative to legitimise all facets of State Capital City development within the broader domestic legal architecture.²⁰ This framework must seamlessly synthesise disparate legal regimes—ranging from land tenure and spatial planning to environmental law and foreign investment—thereby preventing normative vacuums and regulatory overlaps.²¹ Achieving strict harmonisation between the State Capital City Law, its implementing regulations, and broader sectoral laws is therefore vital to ensuring that executive policies are legally sound, coherent, and practically enforceable on the ground.

Furthermore, this legal instrument must be engineered in accordance with the tenets of good governance, principally transparency, accountability, and public participation. The principles of good governance is based on a vital foundation for the exercise of sound and responsible governance.²² Transparency demands institutional openness in providing relevant, accurate, and accessible information, thereby enabling public oversight of the policy-making process.²³ Accountability dictates that all executive decisions and actions remain legally, administratively, and morally answerable to the public as the ultimate locus of sovereignty.²⁴ Meanwhile, public participation ensures the active involvement of citizens throughout the planning, implementation, and evaluation phases, rendering policies more responsive to public interest.²⁵ Collectively, these

²⁰ Indra Perwira et al., 'Capital City Relocation in Indonesia: Compromise Failure and Potential Dysfunction', *Cogent Social Sciences* 10, no. 1 (2024): 2345930, <https://doi.org/10.1080/23311886.2024.2345930>; Anders Kirstein Moeller et al., 'A Relational Approach to Policy Legitimization Strategies: The Case of Indonesia's Capital City Relocation Project', *Environment and Planning C: Politics and Space* 44, no. 4 (2026): 766–84, <https://doi.org/10.1177/23996544261416763>.

²¹ Rofi Wahanisa et al., 'Compensation System of Waqf Land Acquired for Developing Public Interest', *Diponegoro Law Review* (Semarang) 7, no. 1 (2022): 70–87, <https://doi.org/10.14710/dilrev.7.1.2022.70-87>.

²² Nadir Nadir, 'The Paradigm of the General Principles of Good Governance as Examination Method of Indonesian Presidential Impeachment Based on the Perspective of Ethical Control', *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 7, no. 2 (2020): 141–57, <https://doi.org/10.22304/pjih.v7n2.a1>.

²³ Winda Wijayanti et al., 'Transparansi dan Partisipasi Publik dalam Rekrutmen Calon Hakim Konstitusi', *Jurnal Konstitusi* 12, no. 4 (2016): 663–90, <https://doi.org/10.31078/jk1241>.

²⁴ Ronald C. Moe, 'The Emerging Federal Quasi Government: Issues of Management and Accountability', *Public Administration Review* 61, no. 3 (2001): 290–312, <https://doi.org/10.1111/0033-3352.00031>; Jens Steffek, 'Public Accountability and the Public Sphere of International Governance', *Ethics & International Affairs* 24, no. 1 (2010): 45–67, Cambridge Core, <https://doi.org/10.1111/j.1747-7093.2010.00243.x>; Muhammad Fitra Kurniawan et al., 'Measuring Accountability for Filling the Acting Regional Heads in Indonesia', *Jurnal Konstitusi* (Jakarta) 20, no. 4 (2023): 576–603, <https://doi.org/10.31078/jk2042>; Herman Finer, 'Administrative Responsibility in Democratic Government', in *Classics of Administrative Ethics*, 1st edn, ed. Willa Marie Bruce (Routledge, 2018), <https://doi.org/10.4324/9780429501555-2>.

²⁵ Renée A. Irvin and John Stansbury, 'Citizen Participation in Decision Making: Is It Worth the Effort?', *Public Administration Review* 64, no. 1 (2004): 55–65, <https://doi.org/10.1111/j.1540-6210.2004.00346.x>; Diane Day, 'Citizen Participation in the Planning Process: An Essentially Contested Concept?', *Journal of Planning Literature* 11, no. 3 (1997): 421–34, <https://doi.org/10.1177/088541229701100309>; John M. Bryson et al., 'Designing Public Participation Processes', *Public Administration Review* 73, no. 1 (2013): 23–34, <https://doi.org/10.1111/j.1540-6210.2012.02678.x>; Marian Barnes et al., *Power, Participation and Political Renewal: Case Studies in Public Participation* (Policy Press, 2007).

principles serve to foster public trust and minimise future legal disputes, particularly regarding land tenure and utilisation. Through a comprehensive and adaptive legal framework, the development of State Capital City can proceed in a structured, measurable manner that safeguards communal rights and long-term environmental sustainability.

To meet these imperatives, the government and the House of Representatives enacted Law No. 3 of 2022 concerning the Law of New Capital City on 18 January 2022.²⁶ Beyond conferring formal legitimacy upon the capital's relocation, this statute establishes the institutional architecture of the State Capital City Authority—a specialised body vested with the power to plan, construct, and govern the new capital. Crucially, the State Capital City Law encapsulates strategic provisions concerning investment, regional management, and land policy, which collectively serve as vital mechanisms to accelerate the development of the new capital.

A crucial dimension of the development of the New Capital City is land management, specifically regarding the allocation of the Rights to Cultivate and the Rights to Build. The Rights to Cultivate is a right granted over land directly controlled by the state, which may be utilised for agricultural, fisheries, or livestock farming activities. Normatively, the eligibility for the Rights to Cultivate is strictly confined to Indonesian citizens or corporate entities incorporated under domestic law and domiciled within the country.²⁷ Meanwhile, land eligible for the Rights to Cultivate includes state land and land under a Management Right, which may be used to support business activities across various sectors in accordance with applicable regulations.²⁸ A Management Right is a state-owned right, the authority to exercise which is partially delegated to the Management Right holder.

²⁶ Jacqui Baker, 'Reformasi Reversal: Structural Drivers of Democratic Decline In Jokowi's Middle-Income Indonesia', *Bulletin of Indonesian Economic Studies* 59, no. 3 (2023): 341–64, <https://doi.org/10.1080/00074918.2023.2286020>; Barnes et al., *Power, Participation and Political Renewal: Case Studies in Public Participation*; Rendy Pahrun Wadipalapa et al., 'Authority or Authoritarian? The Democratic Threats behind Indonesia's New Capital City', *Contemporary Southeast Asia* 45, no. 3 (2023): 520–43, <https://doi.org/10.1355/cs45-3n>; Delik Hudalah, *Planning Indonesia's New Capital City: Behind Nusantara*, 1st edn, Routledge Contemporary Southeast Asia Series (Routledge, 2025), <https://doi.org/10.4324/9781003529668>.

²⁷ Muh. Afif Mahfud and Naufal Hasanuddin Djohan, 'The Expansion of Investor Access to Cultivation Rights: A Socio-Legal Analysis on Agrarian Injustice in Indonesia', *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* (Jambi) 24, no. 2 (2024): 55–67, <https://doi.org/10.30631/alrisalah.v24i2.1500>; Sri Deviana Siska et al., 'Legal Certainty of Land Grants of Ex-Use Rights According to Law Number 5 of 1960 and the Theory of Milk Al-Daulah', *Al-Mudharabah: Jurnal Ekonomi Dan Keuangan Syariah* (Banda Aceh) 5, no. 2 (2024): 617–36, <https://doi.org/10.22373/al-mudharabah.v5i2.6630>; Martin E. Gold and Russell B. Zuckerman, 'Indonesian Land Rights and Development', *Columbia Journal of Asian Law* (New York) 28, no. 1 (2014), <https://doi.org/10.7916/cjal.v28i1.3344>.

²⁸ Maria S. W. Sumardjono, *Tanah dalam Perspektif Hak Ekonomi, Sosial dan Budaya*, 2nd edn (Penerbit Buku Kompas, 2009).

The spatial scope of an Rights to Cultivate encompasses both State Land and land encumbered by Management Rights, designated specifically to support productive commercial activities in accordance with statutory regulations.²⁹ Within the State Capital City, the Rights to Cultivate performs a strategic function in driving land-based economic development, particularly across the agribusiness, plantation, and commercial sectors. The Rights to Cultivate plays a strategic role in driving land-resource-based economic activities in the Nusantara Capital City area, particularly in the agribusiness, plantation, and other productive sector development sectors. As a new region designed for sustainable economic growth, the existence of Right to Cultivate serves as a vital instrument for attracting investment whilst accelerating the utilisation designed for sustainable economic growth, the existence of Rights to Cultivate serves as a vital instrument for attracting investment whilst accelerating the utilisation of land that has previously not been fully developed.³⁰

From a juridical perspective, the issuance of an Rights to Cultivate remains bound by the state's overarching right of control (*hak menguasai negara*) as codified in the Basic Agrarian Law. Consequently, the state retains the authority to regulate the designation, utilisation, and supervision of Rights to Cultivate lands. Although the Rights to Cultivate vests exclusive management rights in the titleholder, this right is not absolute; it is legally constrained by the doctrine of the social function of land (*fungsi sosial tanah*). Accordingly, land utilisation under the Rights to Cultivate framework within the State Capital City must respect public interest, maintain ecological equilibrium, and prevent excessive land accumulation or tenure disparity. In practice, Rights to Cultivate implementation within the State Capital City requires rigorous supervisory mechanisms and periodic evaluations by the relevant authorities; utilisation oversight is imperative to ensure that allocated land is utilised in strict accordance with its original designation, thereby suppressing land speculation and neglect. Ultimately, aligning Rights to Cultivate policies with broader spatial planning and regional development frameworks is essential to ensuring that land utilisation

²⁹ King Faisal Sulaiman, 'Polemik Fungsi Sosial Tanah dan Hak Menguasai Negara Pasca UU Nomor 12 Tahun 2012 dan Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012', *Jurnal Konstitusi* (Jakarta) 18, no. 1 (2021): 91–111, <https://doi.org/10.31078/jk1815>; Ida Aju Pradnja Resosudarmo et al., 'Indonesia's Land Reform: Implications for Local Livelihoods and Climate Change', *Forest Policy and Economics* 108 (November 2019): 101903, <https://doi.org/10.1016/j.forpol.2019.04.007>; Elmadiantini et al., 'Legal Consequences of Designating Cultivation Rights as Abandoned Land in the Context of Credit Collateral Objects', *Sriwijaya Law Review* (Palembang) 9, no. 1 (2025): 157–72, <https://doi.org/10.28946/slrev.Vol9.Iss1.4029>.pp157-172.

³⁰ Abdul Wahid et al., 'Philosophical and Constitutional Critique of the Negative Publication System in Indonesian Land Registration', *Diponegoro Law Review* (Semarang) 11, no. 1 (2026): 1–23, <https://doi.org/10.14710/dilrev.11.1.2026.1-23>.

remains consistent with the State Capital City foundational vision of inclusive, sustainable, and welfare-oriented growth.³¹

Meanwhile, the Rights to Manage is a form of land right derived from the State's Rights to Control over land, whereby certain authorities are delegated to its holder, such as government agencies or other designated entities.³² Rights to Manage enables its holder to utilise land for specific purposes and to allocate portions of such land to third parties through the granting of derivative rights, including Rights to Cultivate and Rights to Build. The existence of Rights to Manage within the context of State Capital City serves as an important instrument, as it allows the State, through designated authorities, to exercise integrated control over land utilisation while simultaneously providing opportunities for business actors to participate in development through land-right allocation mechanisms.³³ Through Rights to Manage, the State may appoint specific authorities to manage designated areas in a planned manner, including determining land allocation, utilisation, and the distribution of land rights in a more systematic and integrated framework. This is particularly important considering that State Capital City is a special area designed under a long-term development approach, requiring a legal mechanism capable of ensuring consistency in spatial planning, efficiency in land use, and synchronisation between central government policies and their implementation on the ground.

Furthermore, Rights to Manage creates opportunities for private sector participation through the granting of derivative rights, such as Rights to Cultivate or Rights of over Rights to Manage land. This mechanism enables investors to obtain legal certainty for conducting their business

³¹ Arif Rohman and Syafruddin Syafruddin, 'Pemenuhan Hak Masyarakat Dalam Pengelolaan Lahan Pertanian Berdampak Pada Lingkungan: Tinjauan Kritis Pembakaran Lahan', *Jurnal IUS Kajian Hukum dan Keadilan* 9, no. 2 (2021): 422–36, <https://doi.org/10.29303/ius.v9i2.914>.

³² Jude Wallace, 'Indonesian Land Law and Administration', in *Indonesia, Law and Society* (Federation Press Sydney, 2008); Totok Dwi Diantoro, 'A Critical Review of the Actualization of the Right to Control by the State Doctrine in the Policy on Revocation of Forest Area Permits/Concessions', *Jurnal Pembangunan Hukum Indonesia* (Semarang) 7, no. 2 (2025): 250–72, <https://doi.org/10.14710/jphi.v7i2.71-93>; Mustafa Bola, 'Legal Standing of Customary Land in Indonesia: A Comparative Study of Land Administration Systems', *Hasanuddin Law Review* (Makassar) 3, no. 2 (2017): 175–90, <https://doi.org/10.20956/halrev.v3i2.1132>; M. T. Sirait et al., 'Land Rights and Land Reform Issues for Effective Natural Resources Management in Indonesia', in *Redefining Diversity & Dynamics of Natural Resources Management in Asia*, vol. 1, ed. Ganesh P. Shivakoti et al. (Elsevier, 2017), <https://doi.org/10.1016/B978-0-12-805454-3.00009-8>; Glen Wright, 'Indigenous People and Customary Land Ownership Under Domestic REDD+ Frameworks: A Case Study of Indonesia', *Law, Environment and Development Journal* 7, no. 2 (2011): 117–31, <https://researchportalplus.anu.edu.au/en/publications/indigenous-people-and-customary-land-ownership-under-domestic-redd/>; Hariyanto et al., 'Does the Government's Regulations in Land Ownership Empower the Protection of Human Rights?', *Journal of Human Rights, Culture and Legal System* (Surakarta) 4, no. 2 (2024): 391–421, <https://doi.org/10.53955/jhcls.v4i2.222>.

³³ Iwan Permadi et al., 'Ensuring Indigenous People's Rights Protection Through Normative Law in Land Acquisition for Indonesia's New National Capital City, Nusantara', *Jambura Law Review* 7, no. 1 (2025): 30–54, <https://doi.org/10.33756/jlr.v7i1.24930>.

activities while preserving State control over land as a strategic resource. Such a model reflects a balance between investment interests and the principle of State control over land, ensuring that development within State Capital City is not solely oriented toward economic growth but also takes into account considerations of justice, sustainability, and the broader public interest.

Rights to Manage creates opportunities for private sector participation through the granting of derivative rights, such as Rights to Cultivate or Rights to Use over Rights to Manage land. This mechanism enables investors to obtain legal certainty for conducting their business activities while preserving State control over land as a strategic resource. Such a model reflects a balance between investment interests and the principle of State control over land, ensuring that development within State Capital City is not solely oriented toward economic growth but also takes into account considerations of justice, sustainability, and the broader public interest.³⁴

Concerning the duration of Rights to Cultivate, it is granted for a maximum period of 35 years, extendable for a further period of up to 25 years, and renewable for an additional period of up to 35 years, resulting in a total maximum tenure of 95 years. This arrangement is consistent with the provisions of the Basic Agrarian Law and has subsequently been supplemented through the extension mechanism regulated under Government Regulation No. 18 of 2021. Such provisions represent the Government's effort, through existing policies, to facilitate the implementation of Rights to Cultivate.³⁵

The development of the new Nusantara Capital City in East Kalimantan Province is supported by Law No. 3 of 2022 concerning the State Capital City, which serves as the primary legal foundation for implementing this major national strategic project. This framework is further complemented by Government Regulation No. 12 of 2023 concerning Business Licensing, Ease of Doing Business, and Investment Facilities for Business Actors in the State Capital City. Under Government Regulation No. 12 of 2023, Rights to Cultivate may be granted for an initial period of up to 95 years, and business actors may subsequently apply for a second cycle of Rights to

³⁴ Marah Ali Ammar et al., 'Building a Sustainable Future for Indonesia's New Capital, the Nusantara Capital City (IKN)', *Sustainable Futures* 11 (June 2026): 101718, <https://doi.org/10.1016/j.sftr.2026.101718>; Najm Al-Deen Moneer Hilal et al., 'The Multifaceted Implications and Challenges of Relocating Indonesia's Capital City: A Comprehensive Review of Socio-Economic, Environmental, Urban Planning, and Policy Considerations', *Sustinere: Journal of Environment and Sustainability* (Surakarta) 8, no. 3 (2024): 375–96, <https://doi.org/10.22515/sustinere.jes.v8i3.403>.

³⁵ Daniel Peterson et al., 'The Perils of Legal Formalism: Litigating Land Conflicts in Indonesia', *Journal of Contemporary Asia* 55, no. 3 (2025): 430–51, <https://doi.org/10.1080/00472336.2024.2440855>; Suhadi Suhadi and Aprila Niravita, 'Urban Agrarian Reform: Opportunities and Challenges for Land Rights Among Low-Income Communities', *Legality: Jurnal Ilmiah Hukum* (Malang) 32, no. 2 (2024): 348–73, <https://doi.org/10.22219/ljih.v32i2.35842>.

Cultivate for an additional period of up to 95 years, resulting in Nusantara's potential tenure of 190 years within the new State Capital City. This arrangement is further reinforced by Article 9 of Presidential Regulation No. 75 of 2024 on the Acceleration of the Development of the State Capital City, which provides guarantees regarding the duration of land rights and incentives for investors.³⁶

The extension of land rights is subject to several requirements, namely; the land must continue to be properly cultivated and utilised in accordance with the nature, condition, and purpose of the granted right; the right holder must remain qualified as an eligible holder of the relevant right; all conditions attached to the grant of the right must continue to be fulfilled; land utilisation must remain consistent with the applicable spatial planning framework; and the land must not be indicated as abandoned land.³⁷ Accordingly, extensions of land rights, whether Rights to Cultivate or Rights to Build, may only be granted upon satisfaction of the requirements stipulated by applicable laws and regulations. These requirements include ensuring that the land continues to be properly utilised in accordance with the nature and purpose of the granted right, that the right holder remains legally qualified as an eligible subject of the right, and that all obligations associated with the grant continue to be fulfilled. In addition, land use must remain aligned with the prevailing spatial planning framework to avoid conflicts in land utilisation, and there must be no indication that the land has become abandoned. Where these conditions are satisfied, the extension of land rights is expected to remain consistent with the principles of optimal, equitable, and sustainable land utilisation.³⁸

Besides Rights to Cultivate, the Rights to Build also constitutes an important instrument in land management within the new State Capital City. Rights to Build is the right to construct and own buildings on land that is not owned by the right holder. Pursuant to Government Regulation No. 18 of 2021, Rights to Build may be granted for a maximum period of 30 years, extended for a further period of up to 20 years, and subsequently renewed for an additional period of up to 30 years.³⁹ Consequently, where all available stages are fully utilised by the right holder, the total

³⁶ Karjoko et al., 'Legal Inconsistency on the Right to Build: Investment, Agrarian Rights, and Constitution'.

³⁷ Agus Sekarmadji et al., 'Rechtsverwerking in Indonesia: How Land Ownership Can Be Lost Under Customary Law', *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah* 10, no. 2 (2025): 926–48, <https://doi.org/10.22373/petita.v10i2.836>.

³⁸ Iwan Erar Joesoef, 'Rekonstruksi Pencabutan Hak Atas Tanah Dan Konsinyasi Dalam Pengadaan Tanah Untuk Kepentingan Umum', *Masalah-Masalah Hukum* 50, no. 3 (2021): 318–30, <https://doi.org/10.14710/mmh.50.3.2021.318-330>.

³⁹ Werdhi Sutisari et al., 'Land Disputes and Conflicts in Indonesia's Mining Areas: What Constitutes the Ideal Role of the National Land Agency?', *Journal of Law, Environmental and Justice* 4, no. 1 (2026),

period of Rights to Build tenure may reach 80 years. This demonstrates that although Rights to Build is inherently limited in nature, the law nevertheless provides continuity in land utilisation, provided that the prescribed requirements are fulfilled, thereby maintaining a balance between legal certainty for right holders and the principle of State control over land.

Table 1.
Inconsistencies in the Duration Provisions for Rights to Cultivate and Rights to Build Grants at the National Level and Specifically within the Nusantara Capital City

Land Rights	Duration	
	Nationally	For State Capital City
Rights to Cultivate	35 (thirty-five) years + 25 (twenty-five) years + 35 (thirty-five) years. Total 95 (ninety-five) years	95 (ninety-five) years + 95 (ninety-five) years. Total 190 (one hundred and ninety) years
Rights to Build	Total 80 (eighty) years	Total 160 (one hundred and sixty)

Source: author's analysis

Substantively, the data reveal a profound divergence between the general statutory framework governing national land title durations and the specialised legal regime enacted for the State Capital City. At the national level, the maximum cumulative duration for the Rights to Cultivate is capped at 95 years, whilst the Rights to Build is limited to 80 years. Conversely, within the jurisdiction of the State Capital City, both titles have undergone an unprecedented expansion, reaching up to 190 years for the Rights to Cultivate and 160 years for the Rights to Build. This discrepancy serves as a critical baseline for evaluating not only normative contradictions within the law, but also the broader implications of land policy under the specialised State Capital City governance model.

In principle, the Rights to Build granted over State Land or Management Rights land may be extended or renewed upon the application of the titleholder. This mechanism confirms that the Rights to Build is not an absolute right; rather, it remains subject to rigorous evaluation regarding land utilisation and statutory compliance during the preceding term. Consequently, the mechanisms for extending and renewing Rights to Build are key instruments in ensuring that land is utilised optimally and in accordance with the purpose for which the rights were granted.⁴⁰

Furthermore, land utilisation must strictly align with prevailing spatial planning frameworks to prevent spatial conflicts and mitigate adverse environmental or urban impacts. In addition, the

<https://doi.org/10.62264/jlej.v4i1.290>; Made Suksma Prijandhini Devi Salain et al., 'The Regulation of the Ownership of Flats by Foreigners after the Enactment of the Job Creation Law', *Indonesia Law Review* (Depok) 12, no. 1 (2022): 1–16, <https://doi.org/10.15742/ilrev.v12n1.1>.

⁴⁰ Mahfud et al., 'Constitutionality of Simultaneous Extension and Renewal of Land Rights'.

right holder is required to comply with all conditions attached to the grant of the right and must continue to satisfy the qualifications necessary to remain a legally eligible subject of such right. This requirement is essential to ensure that land utilisation remains within the boundaries of the applicable legal framework and is not misused by parties who fail to meet the prescribed legal criteria.

Land utilisation here must remain consistent with the applicable spatial planning framework to prevent conflicts in land utilisation and avoid adverse impacts on the environment and urban development. The land must also not be designated or intended for public purposes, as in such circumstances the State retains the authority to acquire the land to serve public needs. Provided that all of these requirements are fulfilled, the extension or renewal of Rights to Build is expected to maintain an appropriate balance between the interests of right holders and the broader public interest within the framework of sustainable development. From the perspective of Rights to Build and Rights to Use holders, their primary interest lies in utilising and managing the land for business purposes. The development and growth of business activities require sufficient time to generate economic returns and maximise the productive value of the land. Conversely, the public interest is directed toward achieving social welfare, as mandated by the Constitution of the Republic of Indonesia. Accordingly, the Government needs to formulate policies that maintain an equitable balance between the interests of Rights to Build and Rights to Use holders and those of the wider community, thereby supporting the realisation of the State's constitutional objective of promoting the welfare of all Indonesian citizens.

When the Rights to Build are situated over the Rights to Manage title, it establishes a derivative legal relationship wherein the continuity of the Rights to Build is intrinsically tethered to the existence and explicit consent of the Rights to Manage holder. Because the Rights to Manage functions as an administrative check on land use, extensions cannot be executed unilaterally by the Rights to Build holder. Similarly, an Rights to Build established over Land Deed Official.⁴¹ This formal legal process underscores that the Indonesian land administration system prioritises obligations of each party. Upon expiration, a renewal does not occur automatically; rather, it requires the execution of a new Rights to Build title via an authentic deed drafted by a Land Deed Official. This formal legal process underscores that the Indonesian land administration system

⁴¹ Heru Guntero, 'Pelaksanaan Itikad Baik Memory of Understanding dalam Perjanjian Joint Venture Perusahaan Modal Asing', *Mimbar Hukum* 26, no. 2 (2014): 220–23, <https://doi.org/10.22146/jmh.16045>.

prioritises the prudential principle to ensure strict legal certainty, orderly administration, and robust protection for all stakeholders.

In principle, the legal relationship between the Rights to Build holder and an Rights to Manage or Freehold (*Hak Milik*) titleholder is anchored in mutual agreement as articulated in a formal contract. For the Rights to Build established over Freehold land, renewal does not occur automatically; instead, it requires the issuance of a completely new Rights to Build title upon the expiration of the preceding term. This contractual consensus serves as the foundational basis for determining the conditions of land use, including its duration, specific designation, and the reciprocal rights and obligations of each party. Consequently, this private law mechanism represents a determining factor in maintaining legal certainty and mitigating future proprietary disputes.

To satisfy the demands of formal legality, the renewal process for the Rights to Build over Freehold land must be executed via an authentic deed drafted by a Land Deed Official. This deed forms the statutory basis for registering the new interest at the land office, thereby providing robust legal protection for the titleholder. Such a mechanism underscores that the Indonesian land law system moves beyond mere administrative box-ticking, upholding the prudential principle in every transfer and renewal of land titles to guarantee orderly land administration and comprehensive legal certainty for all stakeholders.⁴²

To catalyse development within the New Capital City, Presidential Regulation No. 75 of 2024 concerning the Acceleration of New Capital City Development introduces an exceptional tenure structure. Under Article 10 paragraph (2) (b) of this regulation, investors acquiring the Rights to Build over Management Rights land can secure a total cumulative duration of up to 160 years, operationalised through a dual-cycle framework. The initial cycle grants an 80-year term, while the allocation of a subsequent second cycle of 80 years remains contingent upon a stringent evaluation confirming that the land has been utilised in strict compliance with its designated purpose. In the case of Rights to Build granted over Rights to Manage land, the extension and renewal of the right may be granted, provided that the land has been utilised and managed in accordance with the purpose for which the right was originally granted. Rights to Build may also serve as collateral for debt through the imposition of a mortgage right and may be transferred,

⁴² Nurhasan Ismail, 'Arah Politik Hukum Pertanahan dan Perlindungan Kepemilikan Tanah Masyarakat', *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 1 (2012): 33–51, <https://doi.org/10.33331/rechtsvinding.v1i1.105>.

assigned, relinquished to another party, or converted into another form of land right in accordance with applicable laws and regulations.

Holders of the Rights to Build bear a series of statutory obligations as a direct consequence of the real property interest granted by the state. One of the primary obligations is to carry out development and/or cultivation of the land in accordance with its designated purpose and the conditions set out in the decision granting the right, no later than within 2 (two) years of the right being granted. This provision is intended to prevent land abandonment and to ensure that the land is utilised productively in accordance with the established plan. Furthermore, Rights to Build holders are also obliged to maintain the land properly, including preserving and enhancing its fertility and preventing damage that could degrade environmental quality. This obligation also encompasses efforts to conserve the environment and preserve conservation functions, such as watercourse buffer zones or other conservation areas. Furthermore, the rights holder must comply with spatial utilisation provisions as set out in the spatial plan, so that land use remains consistent with spatial planning policies and does not give rise to conflicts over land use.

Moreover, Rights to Build holders are required to relinquish part or all of their land rights where the land is needed for development serving the public interest.⁴³ This obligation reflects the principle that land rights carry a social function and are therefore not absolute in nature. Furthermore, upon the expiration or termination of Rights to Build, the right holder must return the land to the State, the holder of the Rights to Manage, or the previous rights holder, depending on the legal status of the land concerned. Collectively, these obligations are intended to maintain an appropriate balance between private interests and the public interest in the management of land resources.

2. The Impact of Inconsistencies in the Implementation of the Basic Agrarian Law Concerning the Duration of Rights to Build in Nusantara Capital City

The demand for land in the development sector continues to increase, both for public purposes undertaken by the government and for private investment activities.⁴⁴ Land acquisition

⁴³ Adriaan Bedner, 'Indonesian Land Law: Integration at Last? And for Whom', in *Land and Development in Indonesia: Searching for the People's Sovereignty* (ISEAS-Yusof Ishak Institute, 2016); Anton Lucas and Carol Warren, 'The State, the People, and Their Mediators: The Struggle over Agrarian Law Reform in Post-New Order Indonesia', *Indonesia*, no. 76 (October 2003): 87–126, <https://ecommons.cornell.edu/entities/publication/4847825c-1779-4d0f-a239-67c388e9dc7c>.

⁴⁴ Dian Rahmawati et al., 'From Policy to Practice: How Public Land Policies Shape Private-Sector Housing Development—An Indonesian Case', *Land* 14, no. 5 (2025): 916, <https://doi.org/10.3390/land14050916>; W. J. Kombe, 'Land Acquisition for Public Use, Emerging Conflicts and Their Socio-Political Implications',

has therefore become an essential mechanism for providing land to support a wide range of development initiatives aimed at enhancing the welfare and prosperity of the nation, the State, and all Indonesian citizens. Land serves as a fundamental medium for development, particularly for public-interest projects that require substantial areas of land. However, in practice, land acquisition frequently encounters significant challenges due to the limited availability of land that is ready for development. When the government seeks to initiate a particular project, the required land is often unavailable or has not yet been prepared for acquisition. This situation creates difficulties in the land acquisition process, particularly concerning ownership issues, land clearance procedures, compensation arrangements, and the escalating costs associated with acquiring the necessary land. As a result, land acquisition processes often become prolonged and time-consuming.⁴⁵

Land acquisition remains a critical instrument for ensuring the availability of land needed to support various development activities. Through this mechanism, the government seeks to secure land for projects intended to improve public welfare and economic prosperity, including the construction of roads, dams, public facilities, and national strategic development areas. In this context, land functions as the primary foundation for development, particularly for projects serving the public interest that require large-scale and sustainable spatial utilisation.⁴⁶

Nevertheless, the implementation of land acquisition continues to face a range of complex challenges. One of the most significant obstacles is the limited availability of land that is immediately suitable for development, as the required land is often unavailable or remains under the control of other parties. Such circumstances create difficulties in the land acquisition process, including issues related to ownership status, compensation mechanisms, and the increasing financial burden associated with land procurement. Consequently, land acquisition procedures

International Journal of Urban Sustainable Development 2, nos 1–2 (2010): 45–63, <https://doi.org/10.1080/19463138.2010.520919>; Bakhrul Amal et al., ‘Evolving Notions of Public Interest: A New Perspective on Land Acquisition in Indonesia’, *Indonesia Law Review* 14, no. 2 (2024): 73–84, <https://doi.org/10.15742/ilrev.v14n2.5>.

⁴⁵ Laura Notess et al., ‘Community Land Formalization and Company Land Acquisition Procedures: A Review of 33 Procedures in 15 Countries’, *Land Use Policy* 110 (November 2021): 104461, <https://doi.org/10.1016/j.landusepol.2020.104461>; Yinghong Huang, ‘Beyond Compulsory Land Acquisition: Land Development Approaches in India and China’, *Journal of Social and Economic Development*, ahead of print, 8 October 2025, <https://doi.org/10.1007/s40847-025-00470-9>.

⁴⁶ Graciela Metternicht, *Land Use and Spatial Planning: Enabling Sustainable Management of Land Resources* (Springer, 2018); Cristina Elena Mihalache and Monica Dumitraşcu, ‘Land Use/Land Cover Dynamics and Urban Development Suitability: A Geospatial Analysis of One of the Most Urbanized Counties in Romania’, *Environmental Modeling & Assessment*, ahead of print, 11 April 2026, <https://doi.org/10.1007/s10666-026-10117-6>.

often become slow and protracted, ultimately delaying development projects and reducing the effectiveness of government policies aimed at meeting public needs.

From a positive law perspective, the introduction of unprecedentedly protracted tenures for the Rights to Cultivate and the Rights to Build within the State Capital City has ignited profound public and academic polemics. Critiques suggest that these concessions, rather than merely facilitating the construction of the new capital, risk serving as instruments for commercial exploitation by opening vast avenues for corporate dominance over the land and forest resources of East Kalimantan. Opponents argue that this policy effectively commodifies public acreage that demands prudent stewardship, particularly given the high ecological value and the social function of land inherent to the region. Absent a judicious, long-term resource strategy, this framework could precipitate severe legal liabilities, including a structural disparity in land access for local populations and irreversible environmental degradation across the State Capital City area.

The enactment of Presidential Regulation No. 75 of 2024 concerning the Acceleration of New Capital City Development—which permits the extension of the Rights to Cultivate up to 190 years and the Rights to Build up to 160 years—introduces profound legal ramifications.⁴⁷ Normatively, these extended timelines violate constitutional mandates and the bedrock provisions of the 1960 Basic Agrarian Law. This explicitly stipulates that the terms for both Rights to Cultivate and Rights to Build must be strictly capped and granted progressively in distinct phases, rather than bundled simultaneously. By delivering these expansive durations in a single package, the policy directly contradicts Articles 28 through 40 of the Basic Agrarian Law, thereby undermining the principle of the state's overarching right of control for the purpose of maximising its use for the prosperity of the people. Ultimately, the state's lack of control over land will mean that the objective of managing land for people will not be achieved.

Furthermore, this policy friction directly conflicts with the Constitutional Court Decision No. 21-22/PUU-V/2007. This landmark judgment categorically prohibits the upfront, simultaneous grant of land rights, inclusive of their initial terms, extensions, and renewals. The Court's legal rationale establishes that long-term land allocation cannot be bypassed in a single transaction, as the constitution demands that sovereign natural resources must continuously serve to advance public welfare; consequently, a scheme offering long-term leases as part of a single

⁴⁷ Maulana Arba' Satryadin and Ikhlusal Akmal Aulawi, 'Perubahan Kebijakan Pemberian Hak Atas Tanah di Ibu Kota Negara dalam Perspektif Peraturan Presiden Nomor 75 Tahun 2024', *Jurnal Pertanahan* 15, no. 1 (2025): 30–43, <https://doi.org/10.53686/jp.v15i1.279>.

package may be deemed inconsistent with that ruling. In addition to the above ruling by the Court, there are other Constitutional Court rulings on the same matter, and the Court's position remains consistent.

Compounding these constitutional vulnerabilities, the validity of Presidential Regulation No. 75 of 2024 is further obscured by its intrinsic statutory links to the Job Creation Law, which was previously declared conditionally unconstitutional by the Constitutional Court in Decision No. 91/PUU-XVIII/2020.⁴⁸ This derivative legislative lineage casts a shadow over the procedural and substantive legitimacy of the legal foundations underlying the current State Capital City land tenure policy.

Based on the normative analysis of the inconsistent application of the Basic Agrarian Law, the policies governing the duration of the Rights to Build and the Rights to Cultivate within the State Capital City violate both constitutional provisions and the 1960 Basic Agrarian Law. Furthermore, these temporal policies are demonstrably unconstitutional under Constitutional Court Decision No. 21-22/PUU-V/2007. This ruling fundamentally prohibits the simultaneous granting of land rights—including the initial grant, extension, and renewal—and is further reinforced by Constitutional Court Decision No. 91/PUU-XVIII/2020.

The legal consequences of extending Rights to Cultivate and Rights to Build within the State Capital City can be evaluated through two primary legal principles: *rechtmatigheid* (legal certainty) and *doelmatigheid* (utility).⁴⁹ Examined through the analytical lens of Kelsen's⁵⁰ hierarchy of laws (*Stufentheorie*) and the legislative drafting standards stipulated in Law No. 12 of 2011 on the Formation of Legislative Regulations, it is evident that the 190-year Right to Cultivate tenure permitted under Government Regulation No. 75 of 2024 overlaps inconsistently with primary legislation. Specifically, Article 9 of Government Regulation No. 75 of 2024 conflicts directly with Law No. 5 of 1960 (Basic Agrarian Law), which caps the maximum Rights to Cultivate duration at 60 years (structured as an initial 35 years plus a 25-year extension).

⁴⁸ Rian Saputra et al., 'Executability of the Constitutional Court's Formal Testing Decision: Indonesia's Omnibus Law Review', *Journal of Law, Environmental and Justice* 1, no. 3 (2023): 244–58, <https://doi.org/10.62264/jlej.v1i3.18>; A'an Efendi and Fradhana Putra Disantara, 'Post Conditionally Unconstitutional of Job Creation Law: Quo Vadis Legal Certainty?', *Yuridika* 37, no. 2 (2022): 345–82, <https://doi.org/10.20473/ydk.v37i2.33364>; Ade Yuliasih et al., 'Constitutional Consistency of Indonesia's Job Creation Law and Its Impact on Regional Autonomy', *Jambura Law Review* 8, no. 1 (2026): 190–209, <https://doi.org/10.33756/jlr.v1i1.34262>.

⁴⁹ Gustav Radbruch, *Rechtsphilosophie*, Gesamtausgabe (C.F. Müller), v. 3 (C.F. Müller Juristischer Verlag, 1987).

⁵⁰ Kelsen, *Pure Theory of Law*.

Articles 6 and 7 of the Basic Agrarian Law explicitly dictate that all land rights serve a social function and must align with the public interest. Consequently, excessive land ownership and control—in terms of both spatial scale and temporal value of Pancasila, which mandates that land must be managed and maximised, the principle of social justice enshrined in the fifth pillar of Pancasila, which mandates that land must be managed and maximised for the collective welfare of the Indonesian populace, with the ultimate objective of fostering a prosperous society.

Furthermore, the Constitutional Court in Decision No. 21-22/PUU-V/2007 clarified that extensions for Rights to Cultivate, Rights to Build, and the Rights to Use remain strictly bound by Law No. 5 of 1960 (*in casu* Basic Agrarian Law) and Government Regulation No. 40 of 1996. The discrepancies regarding Right to Cultivate allocation between Government Regulation No. 75 of 2024 and the Basic Agrarian Law expose a non-symbiotic legislative relationship, generating a conflict of norms (conflict of norms) that exposes the government regulation to judicial review before the Supreme Court. This contradicts Article 5 (c) *juncto* Article 6(1) (b) *juncto* Article 10(1)(e) of Law No. 12 of 2011, which dictates that subordinate legislation must maintain strict compatibility with higher laws regarding typological hierarchy, subject matter, the protection of human rights, and the legal needs of society.

From the perspective of *doelmatigheid* or utility, Article 33(3) of the 1945 Constitution explicitly commands that land, water, and the natural resources contained therein must be utilised for the greatest possible prosperity of the people. Conversely, the 190-year Rights to Cultivate tenure authorised by Government Regulation No. 75 of 2024 risks concentrating land control and ownership within a select group of elites. As elucidated in the explanatory notes of Law No. 51 of 1960: “Irregular land use, particularly that which violates legal norms and public order as seen in numerous regions, severely impedes, and often entirely disrupts, the execution of developmental plans across various sectors”.⁵¹

Rather than yielding public utility, the 190-year Rights to Cultivate policy under Government Regulation No. 75 of 2024 is highly likely to trigger social unrest and exacerbate agrarian conflicts. Constitutional Court Decision No. 3/PUU-VIII/2010 emphasises that utilising resources for the “greatest prosperity of the people” necessitates an equitable distribution of natural resource benefits, including land.⁵² As the *guardian of the constitution*, the Constitutional Court’s

⁵¹ Hartati et al., ‘How Do Indonesian Laws and Regulations Shape the Political Landscape of Forestry Licensing?’, *LITIGASI* 25, no. 2 (2024): 359–83, <https://doi.org/10.23969/litigasi.v25i2.19382>.

⁵² Permadi et al., ‘Ensuring Indigenous People’s Rights Protection Through Normative Law in Land Acquisition for Indonesia’s New National Capital City, Nusantara’; Alfath S. Syaban and Seth Appiah-Opoku, ‘Unveiling the

singular interpretation establishes that long-term land rights cannot be granted upfront in a single, aggregated block. Fundamentally, land must function to secure national prosperity and collective welfare.⁵³

In light of the foregoing, the temporal policies governing Rights to Cultivate and Rights to Build concessions in the State Capital City mirror New Order practices, wherein agrarian resource management routinely prioritised capital accumulation over public interest. The benefits of these protracted concessions are disproportionately captured by capital owners—effectively a small circle of oligarchs—leaving the broader public disenfranchised. This dynamic demonstrates a clear disregard for the foundational agrarian principles established in the Basic Agrarian Law, particularly regarding the social function of land and the equitable distribution of tenure.

Paradoxically, the Rights to Cultivate and Rights to Build durations granted in the State Capital City surpass those of colonial agrarian laws, such as the *Agrarische Wet* of 1870, which capped concessions at 75 years.⁵⁴ The fact that these contemporary land tenures arrangement exceed the duration of concessions granted under Dutch colonial period suggests a policy orientation that may be even more extractive than its colonial predecessor. The benefits derived from land concessions in the State Capital City risk being concentrated in the hands of a small oligarchic elite, while the wider population receives little or no meaningful benefit.

Consequently, these land allocation policies are poised to escalate agrarian conflicts, particularly in East Kalimantan—a region already historically fraught with land disputes driven by plantation expansions and natural resource extraction. Granting ultra-long-term Rights to Cultivate and Rights to Build concessions entrenches corporate dominance and systematically

Complexities of Land Use Transition in Indonesia's New Capital City IKN Nusantara: A Multidimensional Conflict Analysis', *Land* 13, no. 5 (2024): 606, <https://doi.org/10.3390/land13050606>; Chairul Fahmi, 'The Application of International Cultural Rights in Protecting Indigenous Peoples' Land Property in Indonesia', *AlterNative: An International Journal of Indigenous Peoples* 20, no. 1 (2024): 157–66, <https://doi.org/10.1177/11771801241235261>.

⁵³ Ahmad and Novendri M. Nggilu, 'Denyut Nadi Amandemen Kelima UUD 1945 melalui Pelibatan Mahkamah Konstitusi sebagai Prinsip the Guardian of the Constitution', *Jurnal Konstitusi* 16, no. 4 (2020): 785–808, <https://doi.org/10.31078/jk1646>.

⁵⁴ Herman Hidayat et al., 'Forests, Law and Customary Rights in Indonesia: Implications of a Decision of the Indonesian Constitutional Court in 2012', *Asia Pacific Viewpoint* 59, no. 3 (2018): 293–308, <https://doi.org/10.1111/apv.12207>; Greg Acciaioli, 'From Customary Law to Indigenous Sovereignty: Reconceptualizing Masyarakat Adat in Contemporary Indonesia', in *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism*, 1st edn, ed. Jamie S. Davidson and David Henley (Routledge, 2007), <https://doi.org/10.4324/9780203965498-21>; Athanasius Allan Darma Saputra et al., 'Justice for Peoples, Rights for Nature: Securing Indigenous Environmental Justice in Decolonising Indonesian Law', *OIDA International Journal of Sustainable Development* 19, no. 5 (2026): 193–210, <https://doi.org/10.64211/oidaijsd190515>; Syukron Salam et al., 'The Evolution of Property Rights in Indonesia', *Journal of Indonesian Legal Studies* 9, no. 1 (2024): 217–48, <https://doi.org/10.15294/jils.vol9i1.3538>.

restricts public access to land. Such conditions reflect a failure by the state and its legislators to protect the interests of the wider Indonesian public. Finally, the opacity and lack of institutional oversight inherent in these long-term concessions create fertile ground for land speculation, land banking, bureaucratic malpractice, and the proliferation of agrarian corruption and land mafias.

The expansive powers vested in the State Capital City Authority regarding land management carry an inherent risk of an abuse of power. Under such conditions, achieving substantive agrarian justice becomes exceedingly difficult, as policy directions consistently privilege investment interests over the protection of community land rights. Affected populations face the distinct risk of being denied fair compensation, particularly when land valuation and compensation mechanisms lack transparency and public participation.

Furthermore, the deployment of judicial deposit mechanisms (*konsinyasi* or consignment) for land acquisition presents serious procedural concerns. While conceptually designed as a mechanism of last resort to resolve deadlocks during consultation, in practice, it can be weaponised to expedite land expropriation without the genuine consent of the affected communities. This fosters manipulative practices, especially when the assessment and determination of compensation packages are executed without independent, transparent, and participatory oversight. Consequently, displaced populations are routinely deprived of just and equitable compensation, thereby institutionalising substantive injustice and exacerbating agrarian conflicts within the State Capital City area.

The policies governing the allocation of Rights to Cultivate and Rights to Build concessions within the State Capital City are poised to accelerate the rate of deforestation in Kalimantan. This can lead to environmental damage, the loss of biodiversity, and an increased risk of ecological disasters. The policy of granting long-term Rights to Cultivate and Rights to Build within the State Capital City is widely regarded as fundamentally at odds with the spirit of agrarian reform. Rather than mitigating inequalities in land tenure or resolving long-standing agrarian conflicts, these measures risk entrenching the concentration of land ownership within select interest groups, thereby obstructing the attainment of agrarian justice.⁵⁵

⁵⁵ Aditya Nurahmani and Putrida Sihombing, 'Kajian Kebijakan Pembatasan Pengalihan Hak Atas Tanah di Ibu Kota Nusantara', *Majalah Hukum Nasional* 52, no. 1 (2022): 27–46, <https://doi.org/10.33331/mhn.v52i1.181>; Ravi Danendra et al., 'How to Resolve Land Ownership Conflicts Involving Government Assets in Indonesia', *Journal of Sustainable Development and Regulatory Issues* 4, no. 2 (2026): 877–914, <https://doi.org/10.53955/jsderi.v4i2.299>; Artaji Artaji et al., 'Resolution of Agrarian Conflicts on Plantation Land through Restorative Justice in Indonesia', *Lex Scientia Law Review* 8, no. 1 (2024): 107–36, <https://doi.org/10.15294/lslr.v8i1.14060>.

Furthermore, the provision of extended Rights to Cultivate and Rights to Build tenures facilitates expansive land-based investments that are likely to accelerate deforestation rates across Kalimantan. The demand for large-scale land parcels necessitates the systematic release of forest estates, achieved either through land-use conversion or the reclassification of forest status. Forests that previously served as critical ecological buffers are now at risk of degradation or total loss, particularly where licensing processes lack rigorous environmental oversight. This situation exemplifies the inherent tension between aggressive economic development agendas and the necessity of environmental preservation.⁵⁶

The cascading effects of such deforestation extend beyond the loss of forest cover to encompass comprehensive ecosystem collapse. Kalimantan's biodiversity—recognised as one of the world's most significant—is under serious threat, including the habitats of endemic flora and fauna. Additionally, environmental degradation of this magnitude heightens the risk of ecological disasters, such as flooding, landslides, and forest fires. Consequently, land and investment policies in the State Capital City ought to be anchored in the principles of sustainable development to prevent long-term ecological liabilities.⁵⁷ The ultra-long-term durations of Rights to Cultivate and Rights to Build in the State Capital City pose significant challenges to the national agrarian reform framework. This policy deviates from the mandate for equitable land distribution and utilisation as prescribed by national agrarian objectives. Instead of promoting land redistribution to the populace, these schemes threaten to sequester land access for the long term, effectively reserving it for major capital holders.

As a result, these policies risk consolidating land control and widening the agrarian inequality gap. The structural agrarian conflicts that have long defined the Indonesian landscape may become increasingly complex,⁵⁸ particularly for the local and indigenous communities impacted by the State Capital City development. In this context, the goal of agrarian justice

⁵⁶ Sukirno, 'Tindak Lanjut Pengakuan Hutan Adat Setelah Putusan Mahkamah Konstitusi No. 35/PUU-X/2012', *Masalah-Masalah Hukum* 45, no. 4 (2016): 259–67, <https://doi.org/10.14710/mmh.45.4.2016.259-267>.

⁵⁷ Tri Atmoko et al., 'Tree Biodiversity in Bornean Lowland Forest: What Are the Key Species for Forest City Development in the New Capital City of Indonesia?', *PLOS ONE* 20, no. 4 (2025): e0320489, <https://doi.org/10.1371/journal.pone.0320489>; Syaban and Appiah-Opoku, 'Unveiling the Complexities of Land Use Transition in Indonesia's New Capital City IKN Nusantara: A Multidimensional Conflict Analysis'.

⁵⁸ Aga Natalis et al., 'Exploring Intersectionality: The Legal Challenges Faced by Indigenous Women in Palm Oil Land Conflicts', *Diponegoro Law Review* 10, no. 2 (2025): 173–98, <https://doi.org/10.14710/dilrev.10.2.2025.173-198>.

remains elusive, as the prevailing policy direction prioritises investment interests over the protection of communal rights to land and natural resources.⁵⁹

The existence of state-owned land is fundamentally intended to serve the interests of the citizenry. Such land constitutes the primary object of agrarian reform, designed for redistribution to landless populations to achieve equity in land ownership and tenure. Legally, the government's interest in maintaining state land is rooted in the obligation to provide public service and satisfy the collective interest—specifically the welfare of residents residing on or near such lands.⁶⁰ Juridically, the concept of state land is anchored in the principle of State Control as mandated by Article 33(3) of the 1945 Constitution, subsequently operationalised through the Basic Agrarian Law of 1960.⁶¹ Under this doctrine, the State is not positioned as the land owner, but rather as the supreme authority with the power to regulate, manage, and determine the allocation, use, and maintenance of land for the greatest possible prosperity of the people. This concept is known as Rights to Control, which provides the legitimacy for the State to distribute land rights to individuals or legal entities through instruments such as the Rights to Cultivate, Rights to Build, and the Rights to Use, known as the State's Rights to Control. However, the granting of these rights remains strictly bound by the principle of the “social function of land.” Normatively, land

⁵⁹ Mahfud, 'Hak Atas Tanah bagi Masyarakat Tradisional di Pantai: Perspektif Hak Asasi Manusia'.

⁶⁰ E. Utrecht, 'Land Reform in Indonesia', *Bulletin of Indonesian Economic Studies* 5, no. 3 (1969): 71–88, <https://doi.org/10.1080/00074916912331331482>; Ida Nurlinda et al., 'The Implementation of Agrarian Reform for Achieving Food Security: Lessons from West Jawa', *Sriwijaya Law Review* 10, no. 1 (2026): 140–55, <https://doi.org/10.28946/slrev.v10i1.5408>; Ayu Anggraini et al., 'Agrarian Reform as Agrarian Justice: Confronting the Agrarian Regime's Ineffectiveness in Realizing Distributive Justice and Human Rights', *Journal of Law, Environmental and Justice* 4, no. 2 (2026): 484–509, <https://doi.org/10.62264/jlej.v4i2.254>; Jeff Neilson, 'Agrarian Transformations and Land Reform in Indonesia', in *Land and Development in Indonesia: Searching for the People's Sovereignty*, ed. John F. McCarthy and Kathryn Robinson (ISEAS–Yusof Ishak Institute, 2016), Cambridge Core, <https://www.cambridge.org/core/product/27A4FE84B5BA8EA46C4195EE8030F30F>; Muhammad Ilham Arisaputra and Abdul Munif Ashri, 'Agrarian Reform as a Human Rights Imperative: Bridging Inequality and Justice in Land Distribution', *Masalah-Masalah Hukum* 54, no. 2 (2025): 227–39, <https://doi.org/10.14710/mmh.54.2.2025.227-239>.

⁶¹ Waldus Situmorang et al., 'Rupture in the Legal Hierarchy: Normative Conflicts and the Subversion of Agrarian Principles in Indonesia's Omnibus Law', *Indonesia Law Review* 14, no. 4 (2024): 89–102, <https://doi.org/10.15742/ilrev.v14n4.6>; Azna Abrory Wardana et al., 'Reconceptualization of Land Acquisition Regulations for Tourism Village Development Based on the Principle of Public Interest', *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 2 (2025): 405–28, <https://doi.org/10.29303/ius.v13i2.1809>; Walter T. de Vries and Sukmo Pinuji, 'Balancing Between Land and Sea Rights—An Analysis of the “Pagar Laut” (Sea Fences) in Tangerang, Indonesia', *Land* 14, no. 7 (2025): 1382, <https://doi.org/10.3390/land14071382>; Willy Naresta Hanum and Nilam Firmandayu, 'Constitutional Guarantee of Ecological Damage Restoration within the Environmental Corruption Nexus', *Indonesian Journal of Crime and Criminal Justice* 2, no. 2 (2026): 232–59, <https://doi.org/10.62264/ijccj.v2i2.258>; Gamal Abdul Nasir and Ade Saptomo, 'Customary Land Tenure Values in Nagari Kayu Tanam, West Sumatra', *Cosmopolitan Civil Societies: An Interdisciplinary Journal* 14, no. 3 (2022): 30–45, <https://doi.org/10.5130/ccs.v14.i3.8099>; Damianus Krismantoro, 'Evaluating the Justice Framework in Land Acquisition: Legal and Policy Review of Government Regulation No. 39/2023 in Indonesia', *Khazanah Hukum* 7, no. 3 (2025): 295–311, <https://doi.org/10.15575/kh.v7i3.46675>.

utilisation must transcend private gain to provide broader societal benefits. Consequently, the management of state land must reflect distributive justice, prevent the monopolisation of land control, and guarantee equitable access through agrarian reform and spatial planning controls.

The current policy of granting protracted Rights to Cultivate, Rights to Build, and Rights to Use durations serves as a strategic guarantee for investors within the State Capital City, which is classified as a bespoke development zone distinct from other Indonesian regions. While the government argues that these long-term tenures provide necessary investor certainty, the framework requires a robust supervisory apparatus to prevent land from being consolidated by a narrow elite. The risk remains that ultra-long-term Rights to Cultivate grants—which empower legal entities to exploit state land for nearly two centuries—will precipitate social conflict. This potential for unrest stems from the fact that the economic yields of such land are almost exclusively captured by the rights-holder.

Furthermore, the granting of extended tenure periods for Rights to Cultivate, Rights to Build, and Rights to Use may contribute to disparities in land control if not accompanied by fair mechanisms for distribution and evaluation. Within the context of the development of the State Capital City, land is regarded as a strategic resource possessing not only economic value but also significant social and ecological functions. The state must ensure that such policies remain consistent with the principle of social justice as mandated by the Constitution, particularly concerning the management of natural resources for the greatest benefit and prosperity of the people. In the absence of appropriate corrective mechanisms, this policy carries the risk of reinforcing monopolistic or oligopolistic patterns of land ownership and control. Accordingly, policies that prioritise the interests of the wider community are essential in the development of the State Capital City, including in relation to the granting of extended tenure periods for Rights to Cultivate, Rights to Bold, and Rights to Use.

As discussed previously, it is important to integrate the principle of the social function of land rights into the implementation of this policy. In practical terms, this means that although such rights may be granted for lengthy periods, their utilisation must continue to take into account the interests of surrounding communities, environmental sustainability, and the avoidance of social exclusion. The government should establish clear performance indicators for rights holders, including obligations to utilise land productively, prohibitions against land abandonment, and requirements to contribute to regional development. Periodic evaluation is essential to ensure that the rights granted are not misused and continue to operate within the framework of the public interest.

Moreover, strengthening public participation in the planning and supervision of land management within the State Capital City constitutes an equally important consideration. The involvement of local communities can serve as a mechanism of social oversight to mitigate potential irregularities in land ownership and utilisation. Transparency regarding the allocation of land rights, including information on the identity of rights holders and the manner in which land is utilised, should be guaranteed by the government. Such a policy of granting extended tenure periods should not only provide legal certainty for investors but also preserve an appropriate balance between economic interests, social justice, and environmental sustainability.

Based on the arguments presented above regarding the inconsistency of the policies governing long-term Rights to Cultivate and Rights to Build concessions compared to the statutory limits set by the 1960 Basic Agrarian Law, a compelling demographic parallel can be drawn. According to 2024 data from the Indonesian Central Bureau of Statistics, the average life expectancy for Indonesian men stands at 70.32 years, and 74.21 years for women.⁶² Consequently, granting land concessions of neo-colonialism operating under the guise of globalisation, for nearly three future generations.⁶³ This policy configuration represents a form of neo-colonialism operating under the guise of globalisation. As a result, the government must ensure that all land policies and development programmes are formulated and executed in accordance with the principles of non-discrimination and social justice. This demands an institutional commitment to maximising available resources to guarantee equitable land rights for all segments of society. Agrarian policies cannot remain purely market-driven or oriented solely towards macroeconomic growth; they must integrate human rights protections, particularly for structurally vulnerable groups.

Furthermore, the state must proactively prevent the systemic marginalisation of vulnerable communities in both rural and urban locales, such as indigenous peoples, smallholder farmers, and low-income households. This protection can be achieved by reinforcing public participation mechanisms, ensuring institutional transparency in decision-making processes, and providing accessible legal recourse for populations displaced or affected by land acquisition. Ultimately, the

⁶² Badan Pusat Statistik, 'Angka Harapan Hidup (AHH) Menurut Provinsi dan Jenis Kelamin', in *Tabel Statistik*, Badan Pusat Statistik, 2024, <https://www.bps.go.id/id/statistics-table/2/NTAxIzI=/angka-harapan-hidup-ahh-menurut-provinsi-dan-jenis-kelamin.html>.

⁶³ Michael E. Odijie, 'Unintentional Neo-Colonialism? Three Generations of Trade and Development Relationship Between EU and West Africa', *Journal of European Integration* 44, no. 3 (2022): 347–63, <https://doi.org/10.1080/07036337.2021.1902318>; Beth Robertson and Per Pinstrup-Andersen, 'Global Land Acquisition: Neo-Colonialism or Development Opportunity?', *Food Security* 2, no. 3 (2010): 271–83, <https://doi.org/10.1007/s12571-010-0068-1>.

national development trajectory must transcend narrow economic expansion, moving instead towards establishing an inclusive, sustainable, and substantively just agrarian framework.

D. Conclusion

Based on the discussion presented in this study, it may be concluded that the regulatory framework governing the extension of the Right to Cultivate and the Right to Build within Nusantara Capital City has been established through legal instruments supporting Indonesia's new capital. Law No. 3 of 2022 concerning the State Capital and its implementing regulations create a distinct land-tenure regime that departs from the general framework in Indonesia. Under this regime, the Right to Cultivate may be granted for up to 190 years, while the Right to Build may be granted for up to 160 years. These periods reflect the government's intention to provide legal certainty, reduce investment risk, and encourage private participation in sectors required for Nusantara's development.

Although these extended rights are promoted as investment incentives, they are not intended to operate without legal restrictions. Rights holders remain subject to obligations concerning productive land use, maintenance, spatial planning, environmental protection, and observance of the social function of land. These requirements are essential because land rights under Indonesian agrarian law are not absolute private entitlements, but legal relationships that must remain consistent with the public interest. Periodic evaluation must determine whether the land continues for designated purpose, whether the rights holder remains legally qualified, and whether all relevant obligations have been fulfilled.

Despite these safeguards, the extension of the Right to Cultivate to 190 years and the Right to Build to 160 years has generated considerable controversy. These arrangements appear inconsistent with the limited duration of land rights established under Law No. 5 of 1960 concerning the Basic Agrarian Law and the constitutional framework governing State control over land and natural resources. This divergence raises important questions concerning the hierarchy of laws, the validity of subordinate regulations, and the application of the *lex specialis derogat legi generali* doctrine. Although special rules may address Nusantara's unique needs, they should not permit unrestricted departure from agrarian principles, particularly social function of land, equitable access, State supervision, and public prosperity.

The exceptional duration of these rights also creates serious socioeconomic risks. Ultra-long tenure may strengthen the position of corporations and investors while limiting land access for local and indigenous communities. Over time, this may concentrate land control in a small number

of entities, widen agrarian inequality, and intensify disputes concerning customary claims, compensation, ownership, and access to natural resources. Committing State-controlled land for almost three generations may also restrict future governmental responses to changing conditions. Such arrangements risk transforming land from a public resource managed for collective welfare into a commercial asset benefiting mainly capital holders.

Environmental considerations further reinforce the need for caution. Large-scale, long-term concessions may encourage intensive land exploitation, forest conversion, and infrastructure expansion without adequate regard for ecological limits. In East Kalimantan, inadequate supervision could lead to deforestation, habitat loss, disruption of water systems, flooding, and other environmental damage. Legal certainty for investors must therefore be accompanied by robust environmental safeguards, comprehensive impact assessments, restoration duties, and effective monitoring. Sustainability should be treated as a substantive legal requirement determining whether land rights may continue.

Accordingly, the legitimacy of Nusantara's land-tenure regime will depend on effective implementation and rigorous oversight. The government must establish transparent procedures for granting, extending, reviewing, and terminating land rights while ensuring meaningful public participation throughout the process. Information concerning rights holders, concession areas, evaluation results, and compliance records should be publicly accessible. Customary land rights must be recognised and protected, while affected communities must receive fair compensation, accessible legal remedies, and genuine opportunities to participate in decisions affecting their land and livelihoods. Effective sanctions must also be imposed where rights holders abandon land, violate environmental duties, or misuse concessions.

Ultimately, long-term land rights in Nusantara may contribute to investment certainty and development efficiency, but they cannot be justified solely on economic grounds. Their implementation must remain consistent with the Constitution, the Basic Agrarian Law, agrarian reform, environmental sustainability, and social justice. Harmonisation between Nusantara's special regulatory framework and the national agrarian system is therefore essential. Through strict supervision, periodic evaluation, transparent governance, community participation, the protection of customary rights, environmental accountability, and enforceable sanctions, land policy can be directed toward a balanced model of development. Its central objective must remain the equitable distribution of benefits and the management of land and natural resources for the greatest possible prosperity of the Indonesian people.

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